Supreme Court, U.S.
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No. 85-1471

(2)

In The
Supreme Court of the United States
October Term, 1985

BOREAL RIDGE CORPORATION,
a California Corporation,

Petitioner,

v.

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, THE HONORABLE JOHN E. GABRIELLI, and GREG TIETJEN (Real Party in Interest),

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

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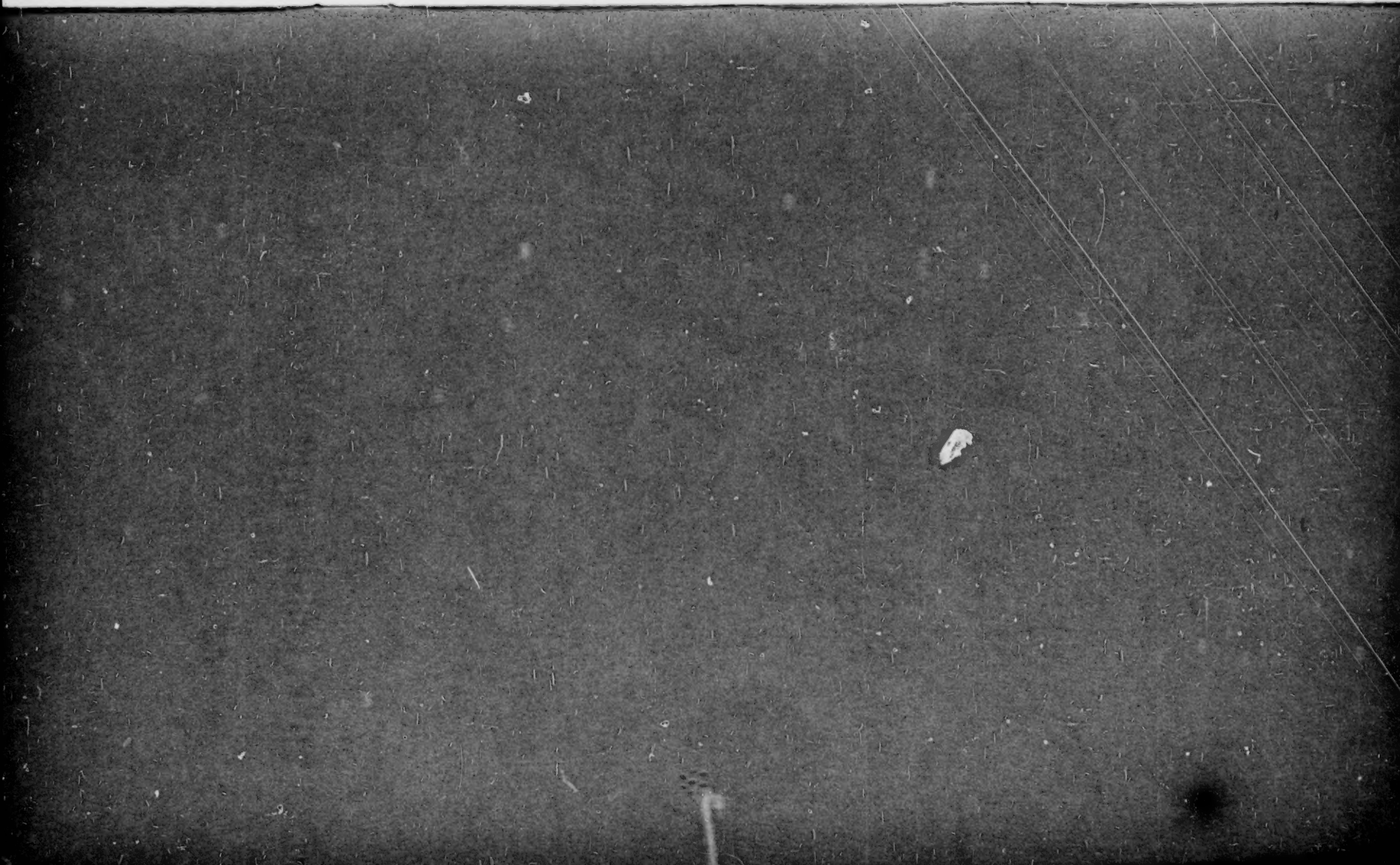

QUESTION PRESENTED

Whether the Nevada Supreme Court erred in holding Petitioner, a California corporation, had sufficient contacts with the State of Nevada to support the exercise of *in personam* jurisdiction over said corporation in Nevada State Court where said corporation had numerous and substantial contacts including major equipment purchases, supply contracts, advertising and other contacts and relationships of an ongoing and systematic nature with the forum state.

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

RESPONDENTS' BRIEF IN OPPOSITION

Respondents hereby submit this brief in opposition to the Petition for a Writ of Certiorari.

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JURISDICTION

Respondents have no objections to the jurisdiction of this Court.

———o———

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

The Fourteenth Amendment to the Constitution of the United States, Section 1:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NEVADA REVISED STATUTE 14.065(2):

> 2. Any person who, in person or through an agent or instrumentality does any of the acts enumerated in this subsection thereby submits himself and if a natural person, his personal representative to the jurisdiction of the courts of this state as to any cause of action which arises from:
>
> (a) Transacting any business or negotiating any commercial paper within this state; . . .

STATEMENT OF THE CASE

The portion of the Statement of the Case by BOREAL outlining the circumstances of the personal injury to Respondent TIETJEN and the legal proceedings below are generally accurate. The following significant facts, part of the record below, are relevant to the jurisdictional issue central to the petition filed herein:

1. Initially, BOREAL's position was that they only engaged in a "very limited advertising effort in the State of Nevada and in fact were not doing any business in the State of Nevada."

2. The Reno-Carson City-Lake Tahoe, Nevada area is the nearest major population center located in the proximity of BOREAL's business. The Nevada state line is approximately twenty (20) miles from Petitioner's business.

3. BOREAL purchases "chair lifts", a major equipment purchase, for its operations from a Nevada company. Contract negotiations for the purchase of said "chair lifts" occur when BOREAL agents visit the Nevada company's manufacturing plant in Nevada.

4. Because of proximity and convenience, BOREAL has an ongoing equipment and parts supply account with a Nevada supply company.

5. BOREAL's advertisement in a Nevada distributed magazine contained a "two-for-one" ticket to BOREAL's "Alpine Slide" amusement facility.

6. BOREAL recruits employees from the State of Nevada and has run employment ads in a Nevada newspaper.

7. BOREAL maintains mailing lists of schools, churches and other groups located in the State of Nevada in order to solicit business from said groups.

8. BOREAL obtains maintenance for its business signs from a business within the State of Nevada.

9. BOREAL reports snow conditions to Nevada radio stations for broadcasting to Nevada residents and Petitioner advertises its facilities through Nevada radio.

10. Respondent TIETJEN has contended his cause of action arose out of BOREAL's transaction of business, in that he went to BOREAL's place of business, where he was injured, as a direct result of Petitioner's advertising the amusement facility in Nevada.

From the above facts, the Second Judicial District Court of the State of Nevada ruled that based upon the totality of BOREAL's business contacts with the State of Nevada, the forum state had jurisdiction over BOREAL. Such holding was affirmed by the Supreme Court of the State of Nevada.

———o———

STAGE AT WHICH THE FEDERAL QUESTION WAS RAISED

The federal question now presented was initially raised before the Second Judicial District Court of the State of Nevada. Said issue was subsequently raised before the Nevada Supreme Court.

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ARGUMENT

I.

THE HOLDING OF THE NEVADA SUPREME COURT IS CONSISTENT WITH THE RELEVANT CASE LAW OF THIS COURT WHEN APPLIED TO THE FACTS OF THE INSTANT MATTER.

The Nevada courts below found that the facts surrounding the conduct and business contacts of BOREAL in the State of Nevada were sufficient to satisfy the jurisdictional requirements required for such assertion. Said contacts were deemed to be continuous and systematic by their very nature. Additionally, the evidence presented regarding the proximity and convenience afforded BOREAL by the State of Nevada was sufficient to establish that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Company v. Washington*, 326 U.S. 310 (1945); *Shaffer v. Heitner*, 433 U.S. 186 (1977).

While BOREAL has chosen to characterize its contacts with the State of Nevada as minimal, such view is not realistic nor persuasive. The totality of the relationship between BOREAL and the state points to a purposeful availment of Nevada's resources and its citizens.

BOREAL relies on the case of *Helicopteros Nacionales De Colombia, S. A. v. Hall*, 466 U.S. 408 (1984) (Helicol) in support of its petition. The contacts and circumstances of BOREAL's contacts with Nevada far exceed those established by the Colombian company in *Helicol*. In addition to major purchases in Nevada, BOREAL maintains an equipment and supply account, as well as business sign

maintenance in Nevada. BOREAL runs employment ads in Nevada and recruits employees from the forum state. More importantly, this is not a case, as in *Helicol*, of the forum state reaching out to another continent to assert jurisdiction. BOREAL's amusement facility is located some twenty (20) miles from Nevada, and the Reno-Carson City, Nevada population area is easily the closest major population base.

In *Burger King Corp. v. Rudzewcz*, 471 U.S. —, 85 L.Ed.2d 528 (1985) this Court held that the "fair warning" requirement necessary when a forum state seeks to assert specific jurisdiction over an out of state defendant "is satisfied if the defendant has 'purposely directed' his activities at residents of the forum." 85 L.Ed.2d at 541. While BOREAL has maintained this action is solely a general jurisdiction action, Respondent TIETJEN has maintained his injury was related to the advertisements of the BOREAL amusement facility through Nevada radio and magazines. Included in one particular advertisement was a two-for-one ticket to the very amusement TIETJEN was injured riding. There can be no question BOREAL lures Nevada residents to its facility. This Court went on to state in *Burger King, supra*:

> A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out of state actors . . . Moreover, where individuals "purposefully derive benefit" from their interstate activities, . . . it may well be unfair to allow them to escape having to account in other states for consequences that arise proximately from their activities. *Id.*, 85 L.Ed.2d at 541.

By luring residents of Nevada to their facility through advertisement and proximity, BOREAL should "reason-

ably anticipate'' litigation in Nevada. *Hanson v. Denckla,* 357 U.S. 235, 253 (1958).

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CONCLUSION

The question presented by BOREAL in it's petition for certiorari has been amply addressed by this Court in the past and recently. The facts attendant to this action are amply sufficient to sustain a finding of either general or specific *in personam* jurisdiction over BOREAL in Nevada. For the foregoing reasons, it is respectfully submitted that the Nevada Supreme Court did not err below and the Petition filed by BOREAL does not warrant the granting of the Writ of Certiorari. The Petition for Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED this 28 day of April, 1986.

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